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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term 1949

In the Matter

—*of*—

R. J. STEVENS BAKING CORP.,

Bankrupt,

CREAM-O PRODUCTS CORP.,

Petitioner,

—v.—

HARRY HOFFMAN, Receiver and Trustee,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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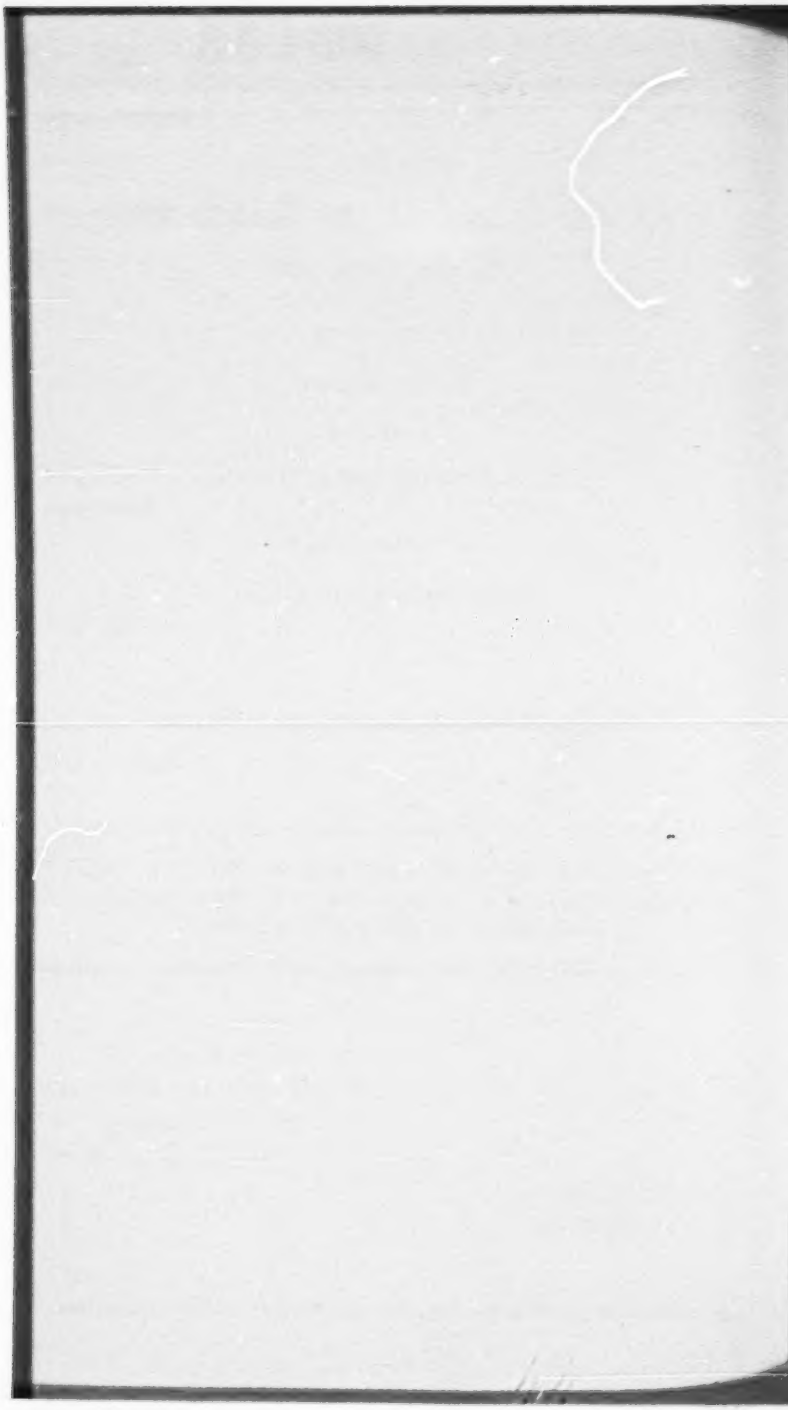

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Cream-O Products Corp., respectfully shows to the Court:

Opinions Below

The opinion of the Court of Appeals for the Second Circuit, reported at 180 F. 2d 649, appears at page 55, of the record. The District Court rendered no opinion. The opinion of the Referee in Bankruptcy appears at folios 94-111 of the record.

Jurisdiction

The judgment of the Court of Appeals was rendered March 20, 1950. Jurisdiction of this Court is founded on Sec. 1254 of Title 28 of the United States Code.

Questions Presented

1. Whether, under the Uniform Conditional Sales Act, a conditional bill of sale, timely filed, which states the purchase price only by reference to an extrinsic source is void as to a trustee in bankruptcy.

2. Whether the court below—by holding directly in conflict with the holding of the Second Circuit *In re Jaeger*, 284 Fed. 136—violated the direction of the Uniform Conditional Sales Act that it be construed uniformly.

3. Whether the holding below is contrary to the law of New York.

Statute Involved

The statute involved is the *Uniform Conditional Sales Act* (*N. Y. Personal Property Law*, §§60 to 80-j). The relevant portions of the statute are set out in the Appendix (*infra*, pp. i-vii).

Statement

On about January 10, 1949, respondent, as receiver in bankruptcy of R. J. Stevens Baking Corp., began this proceeding by petition in the District Court for the Eastern District of New York (13, 94).[1] Respondent sought an order decreeing that, as to him, a conditional bill of sale of certain machinery, executed by the bankrupt to petitioner, was void. Pending decision on respondent's petition, the Referee ordered the machinery sold free of the lien of the conditional bill of sale, the lien, if valid, to attach to the proceeds of the sale (31, 46, 95).[2]

The Referee in Bankruptcy, by written decision, found that the conditional bill of sale was void as to respondent. On June 13, 1949, he entered an order decreeing that petitioner had no lien or claim to the proceeds of the machinery (112). The District Court, without opinion, confirmed the Referee's order (135). The Court of Appeals affirmed (Record, p. 58).

The facts are undisputed (98) and are as follows.

Prior to March, 1948, petitioner had been engaged in producing and selling certain cereal products (99). On March 10, 1948, petitioner sold its business to R. J. Stevens

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1. Later respondent was elected trustee in bankruptcy and continued the proceeding in such capacity.
2. Record references throughout are to folios.

Baking Corp., the bankrupt. The sale comprised machinery, packing materials and trade names (99). The machinery was sold by conditional bill of sale, dated March 10, 1948 (55) and recorded April 1, 1948 (48). This instrument, after describing the machinery sold, provided as follows:

> "Title to the machines and machinery shall remain in the vendor until the full purchase price therefor has been paid by the vendee in accordance with an agreement being entered into simultaneously herewith between the parties hereto" (56).

The price of the machinery was not stated except by this reference to the collateral agreement made simultaneously.

The collateral agreement (23)—though reciting the execution of the conditional bill of sale—did not purport to effect the sale of the machinery. Primarily, it dealt with the sale of the packing materials and the trade names—none of which were conditionally sold. The collateral agreement did, however, state the sale price of the machinery and the manner of payment.[3]

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3. The price for the machinery conditionally sold was $12,771.05 (69), payable as follows:

   $687.37 by check given on or before March 31, 1948 (70)

   $3339.35 representing the unpaid balance on one of the machines, by the purchaser's undertaking to pay this sum to petitioner's vendor (70).

   $8744.33 by the purchaser's paying to petitioner 10% of its weekly gross sales from merchandise produced with the aid of any of the machines or packing materials sold. All such payments were to be applied, first, to payment of the price of the packing materials and, thereafter, to the price of the machinery. Any balance still owing on November 17, 1949, if under $5000, was to be paid in cash; if over $5000, was to be paid $5000 in cash and the balance in four equal monthly notes (76-78).

The conditional bill of sale was timely filed in the Office of the Register of Kings County. The collateral agreement was not filed (104).

The Referee, on the authority of *Empire State Chair Co., Inc.* v. *Beldock*, 2d Cir., 140 F. 2d 587, found that the filing of the conditional bill of sale—without filing the collateral agreement—was not compliance with the filing provisions of the Uniform Conditional Sales Act (107). He held the conditional bill of sale to be void as to the trustee in bankruptcy. The District Court confirmed on the Referee's decision (135). The Court of Appeals affirmed also on the authority of *Empire State Chair Co., Inc.* v. *Beldock, supra.* Petition for rehearing—noting the conflict between the holding here and that of the Seventh Circuit *In re Jaeger*, 284 Fed. 136—was denied (Record, p. 68).

Specification of Errors

The Court of Appeals erred:

(1) In holding that, under the Uniform Conditional Sales Act, the conditional bill of sale given by the bankrupt to petitioner was void as to the trustee in bankruptcy because it stated the purchase price only by reference to the collateral unfiled agreement.

(2) In refusing to follow the holding of the Seventh Circuit, *In re Jaeger*, 284 Fed. 136 and, thereby, violating the express direction of the Uniform Act—adopted in New York—that it be construed so as to achieve uniformity.

(3) In refusing to follow the common law of New York, under which the bill of sale, as filed, was good as to third persons.

(4) In affirming the order of the District Court.

Reasons Relied on for Allowance of the Writ

I

THE HOLDING OF THE SECOND CIRCUIT IN THIS CASE IS DIAMETRICALLY OPPOSED TO THE HOLDING OF THE SEVENTH CIRCUIT — ALSO UNDER THE UNIFORM CONDITIONAL SALES ACT — IN RE JAEGER, 284 Fed. 136.

The *Uniform Conditional Sales Act*, §1 (N. Y. *Personal Property Law*, §61) defines a conditional sale as "any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency" (Appendix, p. i).

The instrument involved here is such a contract. It specifies (a) that the bankrupt is to have possession of the machinery (58) and (b) that title to the machinery is to vest in the bankrupt upon payment of "the full purchase price therefor" (56).

Under the *Uniform Conditional Sales Act*, must the filed contract also state the price, in order to be good as against a trustee in bankruptcy? The Second Circuit holds here that it must. The Seventh Circuit, *In re Jaeger*, 284 Fed. 136, held precisely to the contrary—that the price need not be stated if, as here, the filed contract identifies and refers to an extrinsic source from which the price may be determined.

In re Jaeger, 284 Fed. 136, affg. 284 Fed. 130, the Seventh Circuit said:

"PER CURIAM. On this appeal the only material question is whether a contract of conditional sale, which does not include a stated price for the goods, but which does contain a statement of means by which the price shall be determined, is properly receivable for record under the Wisconsin statute. We approve the affirmative answer given in the opinion of the District Judge (284 Fed. 130), and the decree is accordingly affirmed."

The facts in *In re Jaeger* parallel those here. Both cases arose under the Uniform Conditional Sales Act. In neither was the price stated in the instrument filed. In both, the price was ascertainable from an extrinsic source identified in the document filed. Yet opposite results were reached.

II

THE HOLDING BELOW VIOLATES BOTH THE UNIFORM CONDITIONAL SALES ACT AND THE COMMON LAW OF NEW YORK.

A. Under the Uniform Act.

The law is clear that, if a question is covered by the terms of a Uniform Act, it must be resolved by the provisions of the Act exclusively. The law as it was prior to adoption of the Act is not relevant. *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co.*, 239 U. S. 520, 529.

The Seventh Circuit, *In re Jaeger,* approved the opinion of the District Court. The District Court in that case held that, properly construed, the Uniform Conditional Sales Act did not require the price to be stated in the filed conditional bill of sale. It reasoned as follows:

First, the *Uniform Act* does not expressly require that either the purchase price or terms of payment be stated in order to make the filed contract good as to third persons. *Second*, the tenor of the Act is to the contrary so far as concerns the initial filing. N. Y. *Personal Property Law*, §70 (*Cf. Unif. Cond. Sales Act*, §10) (*Appendix*, p. iv), requires the filing officer to enter only the names of the parties, the date of filing, the filing number and the date of satisfaction. This is in contradistinction to the requirement of the *very same section* that, where railroad equipment is conditionally sold, the record must show, also, either the sum remaining to be paid on the contract or the price of the goods. It is only when the initial filing is renewed at the end of the three-year period that the record must show "the amount remaining to be paid" on the contract. N. Y. *Personal Property Law* §71 (*Unif. Cond. Sales Act*, §11) (*Appendix*, p. vi). Therefore, the District Court concluded *In re Jaeger* that the filed contract is good even though the price is not stated.

The validity of this reasoning is emphasized by the New York statute. New York has supplemented the *Uniform Conditional Sales Act*. N. Y. *Personal Property Law*, §64(a), *Appendix*, p. i, provides that, where property is conditionally sold for $1500 or less, the price—in addition to other terms—must be stated. Non-compliance results in a financial penalty against the seller in the buyer's favor. There is no other penalty. The contract continues valid both as to the buyer and third persons. This is added proof that—as held *In re Jaeger*—the price must be stated only in those cases in which the Act expressly so requires.

Since the Uniform Act contained the answer to the question raised here, the court below erred in departing from the Act and seeking the answer elsewhere.

B. At common law.

Questions arising under the Uniform Act—but not covered thereby—are to be resolved by the "rules of law and equity, including the law merchant"—in short, the common law. N. Y. *Personal Property Law*, §80-h; *Uniform Conditional Sales Act*, §29 (*Appendix*, p. vii).

If we assume that the question at issue here is not covered by the Uniform Act, it must be answered by analogous cases at common law in New York. *Portfolio* v. *Rubin*, 196 N. Y. App. Div. 316, aff'd 233 N. Y. 439. At common law, the rule is alike for chattel mortgages and conditional sales contracts. *Kennedy & P. Co.* v. *Hassen*, 18 S. W. 2d 112, 113; *Huber* v. *Cloud*, 102 N. J. L. 181, 130 Atl. 562, 563; *Stoll* v. *Schneider*, 158 Tenn. 341, 13 S. W. 2d 325; *Rogers* v. *Whitney*, 91 Vt. 79, 99 Atl. 419, 420.

The general rule—followed in New York—is that a recorded chattel mortgage is valid as to third persons—including a trustee in bankruptcy—even though it omits the amount of the debt or describes it only generally, necessitating extrinsic inquiry to ascertain the amount and terms. 145 A. L. R. 369, 375; *Youngs* v. *Wilson*, 27 N. Y. 351; *Shuler* v. *Boutwell*, 18 Hun 171; *Farr* v. *Doxtater*, 9 N. Y. S. 141; *In re Hawks*, 204 Fed. 309, 319, aff'd sub nom., *Crowder* v. *Allen-West Commission Co.*, 8 Cir., 213 Fed. 177; *Tobin* v. *Kampe*, 8 Cir., 132 F. 2d 64.

Therefore, the court below misapplied the New York law, even if it be supposed that the common law of New York—not the Uniform Act—should have been applied here.

C. The court below erroneously assumed that this case was controlled by the cases dealing with the sufficiency of the description of the property sold. Yet even the latter—when properly applied—required a holding for the petitioner.

The court below likened the instant case to those in which the issue was the sufficiency of the description of the property sold. The court held that to omit the price is the equivalent of omitting any description of the property sold. As the latter omission was held—in *Empire State Chair Co., Inc.* v. *Beldock*, 2d Cir., 140 F. 2d 587—to void the contract as to a trustee in bankruptcy, the same result was reached here.

The court below overlooked a decisive fact which voided its analogy. The instant conditional sales contract, though omitting the price, did refer to the "agreement being entered into simultaneously herewith between the parties" (56) as the extrinsic source from which the price and terms of payment could be ascertained. The case, therefore, was not analogous to those in which the description was *omitted entirely* but rather to those in which the *instrument suggested extrinsic inquiries* which, if pursued, would identify the property sold. In the latter instances, the recorded instrument is good as to third persons—including trustees in bankruptcy—if, aided by extrinsic inquiry which the instrument itself suggests, the description will enable identification of the property. This general rule—followed in New York—applies alike to chattel mortgages and conditional sales contracts. 65 A. L. R. 718; *Tilton* v. *H. M. Wade Mfg. Co.*, 4th Cir., 2 F. 2d 358, 359; *In re Raney* (N. D. Tex. 1912), 202 Fed. 1000; *In re Hartley* (M. D. Ga. 1929), 29 F. 2d 916; *Miller* v. *McCray Refrig. Co.*, 8th Cir., 130 F. 2d 873, 874; *Stoll* v. *Schneider* (Tenn.), 13 S. W. 2d

325; *In re Lowry*, 4th Cir., 40 F. 2d 321, 323; *National Cash Register Co.* v. *Marks*, 6th Cir., 13 F. 2d 628, 629; *Liquid Carbonic Corp.* v. *Phillips*, 5th Cir., 68 F. 2d 515; *Floyd* v. *C. Nelson Mfg. Co.*, 5th Cir., 93 F. 2d 857, 858; *In re Kansas City Journal-Post Co.*, 8th Cir., 144 F. 2d 791, 807; *Tobin* v. *Kampe*, 8th Cir., 132 F. 2d 64; *Conkling* v. *Shelley*, 28 N. Y. 360, 362; *Clement* v. *Congress Hall*, 72 N. Y. Misc. 519; *Russell* v. *Winne*, 37 N. Y. 591.

Had the court below correctly applied the analogy derived from cases involving the sufficiency of the description of the property, its holding would follow—not conflict with—*In re Jaeger*, 7th Cir., 284 Fed. 136 and *Tobin* v. *Kampe*, 8th Cir., 132 F. 2d 64.

In re Jaeger, 284 Fed. 136, represents not only the rule under the Uniform Act but also the rule under the common law of New York. It is respectfully urged that certiorari be granted to eliminate the conflict of the holding below with *In re Jaeger*.

III

THE HOLDING BELOW DEPARTS FROM THE RULE FOR CONSTRUCTION OF UNIFORM LAWS ENUNCIATED BY THIS COURT.

The Uniform Conditional Sales Act—like almost all other uniform laws—directs that it "shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." *Uniform Conditional Sales Act*, §30; *New York Personal Property Law*, §80-i (*Appendix*, p. vii). This is a direction to achieve uniformity. In *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co.*, 239 U. S. 520, this Court said:

> "• • • It is apparent that if these uniform acts are construed in the several states adopting them accord-

ing to former local views upon analogous subjects, we shall miss the desired uniformity, and we shall erect upon the foundation of uniform language separate legal structures as distinct as were the former varying laws. It was to prevent this result that the uniform warehouse receipts act expressly provides (§57): 'This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.' This rule of construction requires that in order to accomplish the beneficient object of unifying, so far as this is possible under our dual system, the commercial law of the country, there should be taken into consideration the fundamental purpose of the uniform act, and that it should not be regarded merely as an off-shoot of local law. * * * "

To this end, the courts have held that the statutory direction to achieve uniformity binds the courts of each state to follow the holdings of other jurisdictions which have already construed the Uniform Act.

"This Act has been adopted by many states of the Union in order that there may be uniformity of the laws on this subject within the boundaries of the states adopting it. In the interpretation of similar uniform laws, the decisions of other jurisdictions on such points as have not been decided by the courts of the forum, are not merely persuasive, *but are as binding as would be a decision of the highest court of the forum.*" (Italics supplied.)

In re Halferty, 7th Cir., 136 F. 2d 640 (involving the Uniform Conditional Sales Act).

To the same effect:

Manchester v. *Townshend* (Vt.), 192 Atl. 22, 23;
Aetna Chemical Co. v. *Spaulding & Kimball Co.* (Vt.), 126 Atl. 582, 585;
Stewart v. *Hansen*, 62 Utah 281, 218 Pac. 959, 960;
Union Trust Co. v. *McGinty*, 212 Mass. 205, 98 N. E. 679, 681;
Sheffield-King Milling Co. v. *Domestic Science Baking Co.*, 95 Oh. St. 180, 115 N. E. 1014, 1016;
Hoffman v. *Palmer*, 2nd Cir., 129 F. 2nd 976, 985.

By directing its courts to achieve uniformity, the State of New York bound its courts to conform their holdings, under the Uniform Conditional Sales Act, to those in other jurisdictions. The court below was similarly bound. The Seventh Circuit, having decided—*In re Jaeger*—the point here involved, it was obligatory upon the Second Circuit to follow that holding, as though it were the holding of the highest court of the State of New York.

Therefore, this case presents not only a conflict between the Second and Seventh Circuits but, in essence, a departure by the Second Circuit from the law as it would have been found had the issue been decided by the New York State Court of Appeals. In either aspect, this case is an appropriate one for review here on certiorari. Rule 38, 5(b) of the Rules of this Court.

Obviously, the virtue of the Uniform Act is its uniformity. This has been destroyed by the holding below in disregard of Sec. 30 of the Uniform Act. Henceforth, the twelve jurisdictions which have adopted the Act must choose whether to follow the Seventh or the Second Circuit.

By their conflicting holdings, the Seventh and Second Circuits have erected "upon the foundation of uniform

language separate legal structures" contrary to the direction of this court in *Commercial Nat. Bank* v. *Canal Louisiana B. & T. Co., supra.* It avails the states little to strive for uniformity, if the Federal Courts are to exempt themselves from the direction of the Uniform Acts to construe these acts uniformly.

It is respectfully submitted that a review of this cause is required so that it may be made clear that the Federal Courts are under the same duty as those of the states to achieve uniformity in the construction of the Uniform Acts, now so widely adopted. The matter is of widespread public importance. Some seventy-six uniform laws have been adopted in from one to fifty-three states and territories. 1 *Uniform Laws Ann.*, page XI.

CONCLUSION

WHEREFORE, your petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court of Appeals in this cause to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment herein of said Court of Appeals be reviewed by this Court, and for such further relief as may be proper.

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